Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Cases Concluded under Rendering Assistance/Clarification

CORRECTIONAL SERVICES DEPARTMENT ("CSD")

Case No. OMB 2006/4171

Supplies to inmates – refusing to provide additional blankets

The Complaint

Having served some years of his sentence in Thailand, the complainant was repatriated to Hong Kong for continued imprisonment in a CSD institution. Used to much warmer climate, he asked the management for more blankets. However, the latter rejected his request in the absence of support from the resident doctor.

Acting According to Rules

2. CSD indicated that the management would determine the number of blankets to be issued to inmates according to the location of the institution, the general age profile of the inmates and seasonal changes. Subject to the doctor's recommendation, additional blankets would be provided to individual inmates. This would ensure fair and equal treatment of all inmates and help maintain order and discipline.

3. In this case, the doctor had examined the complainant, but had no specific health reason to justify his request for additional blankets. Nor had the complainant subsequently fallen ill. Later, as the weather turned cold, the management took the initiative to issue one more blanket to every inmate, making a total of four.

Our Comments

4. In principle, CSD had a duty to ensure fair and equal treatment for inmates and proper use of supplies. The way the management handled the request was in keeping with the Prison Rules.

5. However, as the complainant had stayed in a tropical country for many years, he might be particularly sensitive to low temperatures. His request for additional blankets might well be out of genuine need. The management ought to have exercised discretion to cater to the special needs of individual inmates.

CSD's Follow-up

6. This Office was pleased that CSD had reviewed its measures and reminded the officers-in-charge and doctors of all its institutions to be flexible when handling similar cases.

A case of lack of consideration

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD")

Case No. OMB 2007/0017

Smoky vehicle control – (a) arbitrarily appraising a van as emitting excessive smoke and demanding an emission test; and (b) making inaccurate measurements at a Vehicle Emission Testing Centre

The Complaint

An EPD smoke spotter had reported the complainant's van as emitting excessive smoke. Subsequently, the complainant received from EPD an Emission Testing Notice demanding that his van be tested at an approved Vehicle Emission Testing Centre.

2. His van was tested at Centre A, but failed thrice. Later, at Centre B, it passed the test.

3. The complainant alleged that the EPD spotter had made a subjective judgement with the naked eye resulting in EPD demanding an emission test. He also criticised the inaccurate measurements at Centre A.

Spotters System

4. According to EPD, all its spotters have received specialised training and passed examinations. They are able to judge with the naked eye whether smoke emission from a vehicle exceeds the statutory level. Vehicle owners dissatisfied with their appraisal could raise an objection with EPD. A spotter will be disqualified if his performance is proved sub-standard.

Emission Test

5. To pass an emission test, a vehicle has to meet the requirements as regards wheel power, smoke level and engine speed.

Complainant's Test Results

6. EPD stated that the complainant's van had failed in smoke level and engine speed during the three tests at Centre A. At Centre B, its engine speed was still below requirement and it should have been considered "Failed". Nevertheless, EPD let it pass as a transitional arrangement to allow the complainant time to repair his van.

Accurate Measurements

7. EPD's inspection of the records and computer data at Centres A and B confirmed both their emission testing systems to be normal and the results of the four tests accurate. The difference in test results might have been due to the ageing engine of the van affecting its performance.

Our Comments and Suggestions

8. We considered the current arrangements of EPD adequate in preventing incorrect appraisal of vehicles by spotters.

9. The results of the four tests showed that the complainant's van was not mechanically sound and EPD had been correct in demanding an emission test.

10. Centre B had actually stamped the Emission Test Form with a remark that while the engine speed of the complainant's van did not meet the test requirements, "EPD however allows the vehicle to pass the test as a transitional arrangement. Vehicle owner should take remedial action where necessary". These words might have escaped the complainant's attention because the stamp was blurred.

11. Nevertheless, the Certificate of Compliance for Motor Vehicles issued to the complainant by Centre B stated that its purpose was to inform the vehicle owner that "his/her vehicle had passed the vehicle emission test". Such wording might give the vehicle owner a wrong impression that there was no need to repair the vehicle. We, therefore, suggested that EPD review this.

12. We also proposed that EPD should consider imposing a deadline for repair on vehicles that have not fully passed emission tests as in this case.

13. EPD agreed to review both matters.

A case of misleading information

FIRE SERVICES DEPARTMENT ("FSD")

Case No. OMB 2007/0200

Tree removal – refusing to remove a fallen tree

The Complaint

The complainant found a fallen tree having been lying across a footpath in a village for over a year, but FSD refused to remove it.

Not Quite FSD's Responsibility

2. FSD explained that its resources are devoted to fire-fighting, rescue and fire prevention. In carrying out these duties, FSD might exercise its power under the Fire Services Ordinance to remove obstacles.

3. Fallen trees not posing danger to life or property are, however, handled by other departments according to the circumstances. FSD will definitely render assistance if a fallen tree is found to cause danger.

4. In this case, FSD found that the footpath was not a main access road and the tree posed no immediate danger. Moreover, as the tree was on private land, the owner should be responsible for removing it. FSD, therefore, refused to take action.

Laudable Assistance by Civil Aid Service ("CAS")

5. Later, CAS offered help by cutting up the tree for removal by the villagers.

Our Comments

6. We highly commended the enthusiasm of the CAS volunteers.

7. Strictly speaking, while it is not FSD's responsibility to remove fallen trees like this, the tree had been left unattended for over one year and the Agriculture, Fisheries and Conservation Department had rated it as posing "potential danger". We, therefore, considered that as a regular force dedicated to serving the community, FSD should have exercised flexibility and been more forthcoming.

8. We are pleased that FSD had taken reference from this case, drawn up relevant guidelines and provided training as well as additional equipment for staff to deal with such situations.

A case of lack of helpfulness and flexibility

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2006/2082
Complaint handling – failing to handle properly a complaint about canned soft drinks

No Response from Either Department

The complainant bought a few cartons of canned soft drinks from a supermarket. One of them had a tiny metal scrap sticking out from the edge near its flip opening. His mouth was thus injured when he drank from the can. He enquired with the then Health, Welfare and Food Bureau ("HWFB") about laws on consumer protection and channels for complaint and claims for damages.

2. Upon referral by the then HWFB, FEHD acknowledged receipt of the complaint and informed the complainant that as the matter involved consumer product safety, it would be referred to the Customs and Excise Department ("C&ED") for follow-up action. However, the complainant alleged that he did not hear further from FEHD since.

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

FEHD Assuming Action by C&ED

3. Upon receipt of the complaint, FEHD had raised with C&ED the jurisdiction for the case. Meanwhile, legal advice was that the complaint was outside FEHD's jurisdiction as it involved defective container. FEHD thus issued a memo asking C&ED to take follow-up action.

4. FEHD explained that in general, the department responsible for investigation of a complaint would reply to the complainant direct. As the FEHD staff did not receive any further enquiries from the complainant, he assumed that C&ED had followed up the case.

C&ED Assuming Action by FEHD

5. C&ED staff had answered FEHD by email that the complaint was not within its jurisdiction. Since then, the Department never received any further response from FEHD, nor did it receive the memo from FEHD cited above. C&ED, therefore, assumed that the case was already taken up by FEHD and took no further action.

Inadequate Communication

6. This Office considered that there was inadequate communication and coordination between FEHD and C&ED in handling the complaint. FEHD had failed to follow the progress of the case and assumed it had been taken up by C&ED even though the latter had repeatedly indicated that the matter was not within its purview. There was indeed deficiency on the part of FEHD. Furthermore, the Department had failed to keep the complainant posted.

7. We could not ascertain whether C&ED had received the memo issued by FEHD. However, the FEHD staff should have known the stand of C&ED, i.e. that it would not take up the complaint. We found FEHD's explanation far-fetched that it had assumed the case to be taken up by C&ED simply because no further enquiries were received from the complainant.

Need to Safeguard Public Interests

8. Whilst both departments lacked the necessary legal justification to follow up the complaint, we considered Government to have the responsibility to safeguard public interests and that FEHD should promptly issue a letter to the manufacturer of the soft drinks concerned to remind them to pay greater attention to the safety of metal cans for beverages.

9. FEHD accepted our suggestion and subsequently issued an advisory letter to the manufacturer.

A case of lack of communication and coordination

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2006/2097

Complaint handling – impropriety in handling a complaint of suspected food contamination and failure to respond to the complainant's letter

Suspected Food Contamination

The complainant's wife bought a carton of milk from a supermarket in October 2004. Their little daughter fell seriously ill after drinking some of the milk. Suspecting that the milk, which tasted bitter, was contaminated, the complainant lodged a complaint with FEHD. After investigation, FEHD replied substantively in May 2005, that there was insufficient evidence of the milk having deteriorated at the time of purchase. Nevertheless, warning letters were issued to the importer and the vendor, reminding them to ensure that all food products on sale should be of the quality and substance demanded by purchasers.

2. The complainant was dissatisfied that FEHD had delayed in completing chemical tests for sourness and pesticides on milk samples collected from his home and the supermarket. He also considered the tests irrelevant as he suspected the milk had been contaminated by cleaning chemicals during packaging. So he wrote to FEHD again in June 2005. The Department gave an interim reply but no further reply followed.

FEHD's Investigation

3. FEHD investigation of food complaints included checking the same products and the premises concerned, to ensure that the complaint was not due to systemic problem during food production or at the point of sale. The time required by the Government Laboratory ("Govt Lab") for testing a food sample depended on the complexity of the chemical analysis necessary.

4. After investigation, FEHD found neither sufficient evidence nor a reasonable prospect for conviction of the importer or vendor. FEHD considered that its staff had followed the departmental procedures in dealing with the complaint and had already given the complainant a substantive reply after due investigation into the case.

5. We noted that FEHD had generally followed its established procedures in handling the complaint. However, after receipt of the Govt Lab's first analysis report, it had taken about one month to seek further information from the importer/vendor on the milk product. It had also taken over two months, after receipt of the Govt Lab's final report on pesticides analysis, to give the complainant a substantive reply.

6. We recommended that FEHD handle food complaints and reply to complainants promptly in future. It should set a time frame for respective stages of complaint processing.

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

Complainant's Subsequent Letter

7. FEHD admitted to having mislaid the case file and failing to reply to the complainant's subsequent letter until this Office initiated inquiries into the case in July 2006. For this, FEHD apologised to the complainant in writing, indicating also that it had warned the staff concerned and put in place administrative procedures to prevent delay in processing food complaints.

8. In this connection, we examined FEHD's so-called "monitoring" measure and found it to be just a monthly return on the total number of food complaints received for the information of senior officers of the Food Surveillance and Complaint Section. We considered such data inadequate for proper monitoring and recommended that FEHD devise an effective system for the intended purpose.

Tests on Food Samples

9. FEHD re-examined its referral procedures to Govt Lab for analysis of food samples: where a complainant claimed to be sick after consuming certain food, FEHD officer would ask the complainant to seek medical advice on any suspected causative agent(s) and convey the same to Govt Lab for consideration of the appropriate test(s).

10. Decisions on tests to be administered on food samples involve professional judgement, not an administrative matter *per se*. We were, therefore, not in a position to comment. Nonetheless, we considered the proposal for providing relevant medical advice, if available, to Govt Lab Chemists to facilitate their decision a sound measure.

11. We consulted Govt Lab on this complaint and noted with concern that Govt Lab concurred with the complainant that the pH value/acidity tests served little purpose in this case, because the carton of milk had already been opened for seven days. Such a view was at variance with FEHD's account that the tests had been conducted on the expert advice from a Govt Lab Chemist.

12. We then examined the "Statement of Food Complaint", completed by the complainant's wife, reporting the date of opening and consumption of the carton of milk and its bitter taste. We also examined the "Application for Analysis of Sample/Specimen", completed by the FEHD officer on the same day, indicating that the "analysis required" was "pH value and titratable acidity", without reference to the Chemist's advice as claimed. Neither did the officer complete the section on the circumstances and background to the test.

13. In the circumstances, we were concerned that the FEHD officer might have omitted information crucial to the Chemist and whether such omission could have been avoided if the "Statement of Food Complaint" had also been submitted to the Chemist together with the milk sample for analysis. In this connection, we recommended that FEHD submit relevant parts of the statement to Govt Lab for reference and require staff to complete the "Application for Analysis of Sample/Specimen" properly.

14. On the complainant's view that the milk sample should have been tested for cleaning chemicals in the light of a worldwide history of milk contamination by such materials in packaging, we considered that FEHD, with responsibility for food safety in Hong Kong, should have built up a database on such matters and be able to recommend to Govt Lab specific tests on a food sample to detect foreign substances that might have been acquired during the production process. We recommended that FEHD establish a database on food safety matters and draw the attention of Govt Lab and other food testing organisations to relevant issues where appropriate.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2007/1658

Fixed-pitch hawkers – failure to follow up a complaint and delay in giving a reply

The Complaint

The complainant had telephoned FEHD repeatedly about the unauthorised letting of three fixed pitches by their licensees. A staff member of FEHD had undertaken to follow up his complaint but did not reply.

Regulation of Fixed-pitch Hawkers

2. Under the Hawker Regulation, no person shall use a fixed pitch unless he is the holder of a fixed-pitch hawker licence. Moreover, the licensee must personally conduct or supervise the operation of the business. He may employ assistants but an assistant cannot engage in hawking in the absence (unless for good reason) of the licensee. Otherwise, the assistant may be prosecuted for illegal hawking.

Was the Complaint Received?

3. FEHD confirmed that all the pitches had valid licences and the licensees were allowed to hire assistants. The Department had no record of having received the complaint but the two telephone numbers mentioned by the complainant were those of the office and a staff member's personal mobile telephone.

4. The staff member concerned submitted a written statement that he had not received the telephone complaint. However, when on patrol one day, his mobile telephone received a call without display of the caller's number, alleging that the licensees of some fixed pitches in a certain street had violated the Regulation. Because of the noisy surroundings, he could not get the details from the caller. Nevertheless, he asked his staff whether there were any irregularities at the place mentioned and learned that none had been detected during their routine patrols. As the complaint lacked details, he could not follow up the case and kept no record.

5. FEHD considered that the staff should have opened a file to record clearly the complaint and any action on it.

6. The Department maintained that it had never received the complaint. However, on learning of it, an investigation was conducted and the complainant contacted by telephone to explain the legislation and the policy.

7. We noted the complainant's detailed description of the incident, particularly his accurate recollection of the office and mobile telephone numbers. Consequently, despite FEHD's denial, we considered it reasonable to believe that FEHD had indeed received the complaint but had failed to respond.

Was the Regulation Breached?

8. FEHD indicated that in the routine patrols for the past year or so, the licensees involved had personally operated their business without contravening the licensing conditions. Furthermore, several special patrols had subsequently been conducted and no irregularities were found.

9. We examined the hawker licences of those fixed pitches and made two site inspections. We found the three pitches to be in business but the operators there all looked different from the pictures of the registered holders on the licences.

10. The complainant later provided us with supplementary information stating that as two of the licensees had been living in the Mainland for a long time, they could not possibly conduct or supervise their business personally as required. However, after checking with the Immigration Department, FEHD found such allegation to be untrue.

11. We considered that FEHD should nevertheless closely monitor the situation, step up their inspection and check the identity of the operators against the licensees to guard against unauthorised letting activities.

12. FEHD undertook to monitor the situation closely and gave appropriate instructions to the staff concerned.

A case of failure to follow procedures and delay

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD"), BUILDINGS DEPARTMENT ("BD") AND WATER SUPPLIES DEPARTMENT ("WSD")

Case Nos. OMB 2007/3947-3949

Seepage complaint – shirking responsibilities and failing to resolve seepage

The Complaint

The complainant lodged a complaint with FEHD for water seepage in her bathroom. The Department referred her case to BD and WSD for action. However, the problem dragged on for more than a year without

resolution. She then complained to this Office against the departments and the Joint Office ("JO") staffed by BD and FEHD, for improper handling of her complaint, shirking of responsibilities and lack of response to her enquiries.

Response from FEHD/JO

2. FEHD staff had followed departmental guidelines and procedures in handling the complaint and had kept the complainant informed of the test results. They had issued a "Notice of Intended Entry" in good time to facilitate BD's consultant gaining entry to the flat above the complainant's for testing.

Response from BD/JO

3. The complainant alleged that her repeated calls to the consultant and JO for investigation results were not answered. BD stated that JO had no records on the complainant's enquiries, while its consultant failed to address this issue upon JO's enquiry on the matter.

4. On the complainant's allegation that the tests conducted by the consultant were worse than those by FEHD and failed to identify the source of seepage, BD maintained that JO and its consultant had handled the case according to established procedures and guidelines. BD reckoned that the long time taken on the case was due to the consultant's incompetence and the difficulty in gaining entry to the unit above for testing. Consequently, BD decided not to re-appoint the consultant. Meanwhile, JO would continue to follow up the case.

Response from WSD

5. The complainant alleged that WSD had handled her complaint perfunctorily. WSD indicated that as the FEHD report on its initial investigation showed no evidence of leakage of water pipes or water wastage at the unit above, further investigation was not warranted. As the situation had remained unchanged on FEHD's second referral, WSD maintained its original decision and issued a quick reply to the complainant.

Observations and Opinions

6. Seepage can be distressing to those affected. However, maintenance of private buildings (including resolving seepage problems) is basically the responsibility of property owners. The parties concerned should work together to resolve the problem and to eradicate the cause. The affected party should enlist professional help and, if necessary, may resort to civil action.

7. We considered that FEHD and WSD had handled this case within the limits of their statutory powers and in accordance with established procedures. However, the overall operation of the newly established JO and the coordination among departments would bear improvement. We have made suggestions to the departments concerned and initiated a direct investigation into the work of JO.

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

8. Nonetheless, we were deeply concerned about BD's supervision of its consultant, including the latter's attitude and efficiency in handling the case. The consultant inspected the complainant's unit and the unit above only after months of assignment and submitted an incomplete report five months after testing at the unit above. It had also failed, despite repeated requests from JO, to revise the report and to address JO's enquiries about its handling of the complainant's telephone enquiries. The case, therefore, remained unsettled.

9. We considered that BD had not supervised its consultant adequately and suggested improvement measures. BD responded positively to our suggestions on enhancing control over its consultants, by providing in the new consultancy contract timeframes on critical stages and drawing up departmental guidelines to appraise consultants' performance.

A case of negligence

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND DEPARTMENT OF JUSTICE ("D of J")

Case Nos. OMB 2006/4476; OMB 2007/0177

Handling of littering case – (a) coercing the informer to provide personal information and to appear in court as witness; and (b) failing to give reasonable explanation for withdrawal of prosecution

The Complaint

The complainant reported to FEHD a case of littering from vehicle. At the request of FEHD, he went to its office to sign a document to be submitted to the court but was then forced by a staff member, with threatening words, to provide his residential address and to give evidence as witness when the case went to court. The complainant then applied to his employer for leave, but was told three days later that FEHD had applied to withdraw the prosecution because D of J considered there to be insufficient evidence.

2. The complainant was dissatisfied for having been forced into providing personal information and agreeing to give evidence in court, only to be informed afterwards that the prosecution was withdrawn. He also claimed that FEHD had failed to explain in detail why the charge had been dropped. He lodged a complaint through the Government Integrated Call Centre ("ICC") and demanded a detailed explanation but to no avail. He then complained to this Office against FEHD and D of J.

Coercion Denied

3. The FEHD staff member who had handled the case denied having threatened or forced the complainant to provide information or to appear in court as witness. After investigation, FEHD found no evidence of human error involved but advised the staff concerned to explain clearly departmental policy and work procedures when handling public complaints or enquiries in future to avoid misunderstanding.

Procedures Followed

4. Regarding the complaint lodged through ICC, FEHD claimed that its district office staff had followed established guidelines. Moreover, he had informed the complainant of latest developments of the case and apologised for the inconvenience caused.

5. On the decision to withdraw prosecution because of insufficient evidence, FEHD explained that the Department had followed the relevant procedures in collecting information, instituting prosecution and consulting D of J. The decision was made after considering the advice from D of J.

Reason for Early Notification Explained

6. FEHD explained that notifying the complainant to prepare for the trial while seeking legal advice from D of J was intended to save time, but the Department agreed that such practice might seem premature to the complainant. To avoid any misunderstanding in future, FEHD instructed staff to confirm the decision to prosecute before asking the informer to give evidence in court. FEHD apologised to the complainant.

D of J Advice

7. D of J explained that under normal circumstances, FEHD could decide on its own whether prosecution should be instituted, but could also seek legal advice where necessary to check whether there was sufficient evidence. In this case, FEHD had started the prosecution before approaching D of J for advice. After studying the case, D of J advised that there was insufficient evidence.

Our Comments and Conclusion

8. In the absence of independent evidence, this Office could not determine whether the FEHD staff had forced the complainant to disclose his address. However, we considered that the provision of personal information when reporting a case of littering from vehicle should be voluntary and that FEHD staff should explain to the complainant the pros and cons of providing such information. Moreover, FEHD should wait for legal advice from D of J to confirm whether there is prima facie evidence to proceed with the prosecution before asking the complainant to attend court.

9. As legal proceedings and prosecution decisions are not subject to our investigation, we would not comment on this. In view of the lawyer-client privileged communication (between D of J and FEHD), we considered that FEHD had already provided as much information as possible to the complainant. In any case, whether there was sufficient evidence to pursue the case involved professional judgement beyond our purview.

A case of inconsiderate procedures

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND FIRE SERVICES DEPARTMENT ("FSD")

Case Nos. OMB 2007/3854-3855

FEHD – restaurant licence application – requiring an applicant to produce a valid Annual Fire Inspection Certificate, while other restaurants in the building could continue to operate without it

FSD – monitoring of fire safety – failing to conduct timely inspection and allowing delay in repairs to fire service installations

The Complaint

The complainant applied to FEHD for a general restaurant licence to start operation in a building and the Department required a valid Annual Fire Inspection Certificate ("AFIC") of that building. However, he considered that unfair as other restaurants in the building were allowed to continue operation even though the AFIC had long expired.

2. Moreover, FSD did not conduct any inspection of the building until some seven months after the expiry of the AFIC. During the inspection, non-compliance was found in the fire service installations. FSD asked the Owners' Corporation ("OC") of the building to repair the installations within 30 days, but later extended the deadline to 60 days. The complainant was dissatisfied that FSD's delay had affected FEHD's processing of his licence application.

Annual Inspection Required

3. Under the Fire Service (Installations and Equipment) Regulations, the owner of any fire service installations shall have them inspected by a registered contractor at least once every 12 months. The contractor shall afterwards issue an AFIC to the owner, with a copy to FSD.

4. FSD requires applicants for general restaurant licence to comply with all fire service regulations, before issuing to them a Fire Service Certificate ("FSC").

FEHD's Requirement Legitimate

5. FEHD had acted according to the law in requiring the complainant to produce an FSC, while the AFIC referred to by the complainant was one of the criteria for the issue of such a certificate. As proper fire service installations are essential to the safety of customers as well as residents, this Office considered FEHD's requirement legitimate and reasonable.

But Little Concern for Overall Safety

6. As to the complainant's allegation that other restaurants in the building were able to operate without a valid AFIC, this Office questioned whether FEHD should have turned a completely blind eye to the issue of overall safety, even though allegedly it does not have the power not to renew their restaurant licences based on their lack of a valid AFIC.

7. The Ombudsman, therefore, decided to make further inquiries separately.

FSD's Delay and Lack of Internal Coordination

8. FSD explained that as it had to handle a huge number of AFICs every year, it could only conduct random checks. The building in question had not been selected for checking. Upon receipt of the complainant's complaint, the Department conducted an inspection and then issued a warning letter to the OC, requiring repairs to the fire service installations within 28 days. The OC requested an extension to allow time for convening a management committee and an owners meetings. Three weeks after a further inspection, FSD issued a notice to the OC demanding repairs within 60 days with a prosecution warning.

9. This Office found the three weeks' delay unreasonable. Furthermore, while we appreciate FSD's resource constraint, it was indeed worrying that the owners of some buildings not selected for checking by FSD might choose not to maintain their fire service installations in good working condition, thus posing a serious safety problem. We, therefore, urged FSD to revise its procedures, issuing repairs notices to building owners immediately upon receiving inspection reports from the contractors concerned.

10. This Office also noted that the Licensing and Certification Command and the Fire Service Installation Task Force under FSD were respectively responsible for processing restaurant licence applications and inspecting fire service installations. In this case, although the former had found irregularities in the fire service installations, they failed to alert the latter such that the latter only took up the case upon receipt of the complaint. This reflected that internal communication and coordination was seriously lacking in FSD.

11. FSD accepted our suggestions and introduced a new notification system to enhance its internal coordination and communication.

A case of delay, inadequate coordination and lack of concern for public safety

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

FORMER EDUCATION AND MANPOWER BUREAU ("EMB")

Case No. OMB 2007/2793
Substitute staff – impropriety in processing an application from a special school for hiring a substitute nurse

Nursing Care Affected

The complainant's daughter attended a special school, where the school nurse had suffered from threatened abortion and had to go on bed rest. However, the former EMB (reorganised as the Education Bureau ("EDB") since 1 July 2007) insisted on the school hiring a substitute nurse direct and not through an intermediary (such as a medical service organisation). Consequently, the school could not find a suitable substitute and the nursing care was affected. The complainant considered that her daughter had fallen victim to such a rigid system.

The Rules

2. The school head had enquired about the hiring of a substitute nurse. An EMB officer had then replied by reference to a circular that the school had to verify the information and *curriculum vitae* provided by a prospective substitute nurse so as to set the daily rate payable from Government subsidy for "salaries". The school head had also to inform the substitute nurse the detailed terms of employment. Moreover, the wages had to be paid directly to the substitute nurse, and not to an intermediary organisation. The measures aimed to ensure the quality of service and good communication between the nurse and the school.

3. As the school nurse in this case had taken only 15 days sick leave intermittently, the then EMB maintained that the school should adhere to the Code of Aid for Special Schools and the circular above. This meant hiring a temporary substitute nurse to be paid at a fixed daily rate.

Some Flexibility Introduced

4. Recognising the recent shortage of nurses, EDB decided to allow flexibility in hiring substitute nurses by permitting schools, from the school year 2007/08, to use its cash subsidy to hire substitute nurses or nursing services.

Further Flexibility Suggested

5. We noted that, although the school nurse's sick leave totalled only 15 days intermittently, she might need bed rest before delivery and hence would require leave for several months. In such event, EDB should consider allowing the school to pay a substitute nurse on a monthly salary.

6. The Bureau's circular did not explicitly prohibit special schools from hiring a substitute nurse through an intermediary organisation. In fact, schools could sign a service contract with such organisations to act for them

to verify the qualifications of a prospective substitute nurse. Since medical service organisations had a list of candidates, it would be much easier and more efficient to search for suitable substitute nurses through them.

7. In this light, EDB should state in the circular that schools could hire substitute nurses through an intermediary organisation and should provide them with clear guidance for implementation.

8. EDB implemented all these suggestions.

A case of inflexible procedures

HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY ("HKEAA")

Case No. OMB 2007/2534

Marking of examination scripts – impropriety in marking the scripts of two subjects in the Hong Kong Advanced Level Examination

The Complaint

The complainant sat for the 2007 Hong Kong Advanced Level Examination ("HKALE"). He alleged that HKEAA had improperly handled the marking of the examination scripts of the following two subjects:

(a) a task in Section E of the subject Use of English ("UEE Paper"); and

(b) the last section of Paper 3 of the subject Chinese Language and Culture ("Chinese Paper 3").

UEE Paper

2. Candidates taking the 2007 UEE Paper were asked to write a letter of not more than 500 words, failing which they would not score the two bonus points in "word limit" the same way as with the 2006 UEE Paper. However, the marking scheme was revised after the examination such that answers would be marked only up to the limit of 500 words. Beyond that part, candidates would not score points even for content.

Chinese Paper 3

3. It was stated in the examination paper that all questions must be answered and points would be deducted for a wrong answer, with no mention of what would happen if a question was unanswered. The complainant was dissatisfied with HKEAA's response to his enquiry that no points would be deducted for unanswered questions as unanswered questions meant failure to meet the requirement of answering all questions and so points should be deducted. He considered that HKEAA should have stated this criterion in the examination paper.

Response from HKEAA

UEE Paper

4. A major aim of the UEE Paper was to assess whether candidates could apply their English language skills and write accurately in work and study situations. The ability to present ideas effectively within the 500-word limit was an integral part of the assessment.

5. The marking scheme for an examination paper was developed alongside the setting of the paper and thus varied from year to year. HKEAA had all along advised teachers and students not to use any past marking scheme as a model for future examination papers.

6. Marking schemes were also subject to amendments and refinements after the examination, with reference to the specific circumstances of candidates' performance and behaviour in the examination. This was in line with international practice and HKEAA's established procedures, details of which had been published for general information.

7. It was, therefore, impossible to inform candidates of the marking schemes in advance, though they would be released some six months after the examination in the *"Examination Reports and Question Papers"* of individual subjects published for sale.

8. For the 2007 UEE Paper, the panel of markers found that a large number of candidates had written well above 500 words. As giving them marks would be tantamount to "rewarding" poor examination practice and defeat the purpose of assessing candidates' ability through the examination, the panel decided not to give "content" points to the part of an answer that had significantly exceeded the word limit. However, the full answers would still be assessed for the candidates' overall presentation skills.

Chinese Paper 3

9. The requirement that "all questions must be answered" was set *vis-à-vis* other examination papers, such as composition, which allowed candidates to choose one from a number of questions. As such, leaving a question unanswered did not breach the examination rules but would simply score no point.

Our Observations and Comments

10. The design of marking scheme for an examination paper involved professional judgement. It was not an administrative matter and we would comment only on HKEAA's practices and procedures.

Public Expectation

11. For the UEE Paper, we could understand why HKEAA expected candidates of HKALE, a high-stake examination, to keep within the word limit and imposed a penalty for non-compliance, namely, to ensure that individual candidates would not gain an unfair advantage over others by breaching the examination rules.

12. However, with the marking scheme being published year after year for reference by teachers, students and others, there would be understandable (albeit unjustified) expectations by some candidates that a similar marking scheme would be adopted for the following year, unless a change was announced beforehand or clearly indicated in the examination papers, especially for such a significant one in this case.

13. As regards Chinese Paper 3, while it was common sense that unanswered questions would neither score nor lose points, we noted the concern raised by the complainant.

Clearer Guidelines Needed

14. To avoid future misunderstanding or dispute, HKEAA should indicate in the candidates' handbook and the appropriate examination papers any part of the answers significantly exceeding the prescribed word limit as not scoring content points and how unanswered questions will be marked.

INLAND REVENUE DEPARTMENT ("IRD")

Case No. OMB 2007/3240

Application for exemption – failing to follow up the complainant's application for waiver of Business Registration Fee

The Complaint

In June 2005, the complainant applied to IRD by surface mail for exemption from payment of Business Registration Fee for that year but received no reply. In early April 2006, she again applied to IRD, this time by fax, and at the same time applied for further exemption for the ensuing year. Thereafter, she telephoned the Department for enquiries. The staff replied that if they did not receive the two applications, they would certainly contact her. Yet, she never received any notification from IRD.

2. In May 2007, the complainant went to IRD in person to enquire about the progress of her applications but the staff indicated that they had never received those applications. The complainant considered that there was dereliction of duty on the part of the staff in failing to follow up her applications.

Different Version from IRD

3. IRD had never received the two applications mentioned by the complainant. Nor had it received the alleged telephone enquiries. It was, therefore, not able to take any follow-up action.

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

4. Photocopies of the application forms provided by the complainant showed that they were an amended version. However, amendment of the form started only in March 2006 and IRD did not distribute the new form until June 2006. In other words, forms issued before June 2006 were old version.

5. IRD could not understand how the complainant was able to obtain and fill out the new forms before they were issued. IRD, therefore, doubted the honesty of her allegations.

Complaint Dubious

6. The complainant maintained that she had used the old forms for her applications. However, as the original forms had become blurred, she completed the information on the new form again to lodge her complaint. The complainant undertook to provide this Office with one of the original blurred applications by post for our reference. However, the documents never reached this Office.

7. We considered the complainant's explanation about the blurred forms hard to believe. Moreover, she had not mentioned this when she lodged the complaint with us. We, therefore, shared IRD's view and doubted the veracity of her allegations.

A case of dubious allegation by the complainant

JUDICIARY, LEGAL AID DEPARTMENT ("LAD") AND LABOUR DEPARTMENT ("LD")

Case Nos. OMB 2006/4353-4354; OMB 2006/4440

Judiciary and LAD – legal aid application – shifting responsibility when handling the complainant's application

LD – claims for wages – mistaking the complainant's two former employers to be the same person

The Complaint

The complainant sought payment of his holiday wages in arrears from his former employers through LD. A conciliation meeting was arranged by LD. However, his former employers failed to attend. The complainant then filed a claim with the Labour Tribunal ("the Tribunal") under the Judiciary and won the case. On his former employers' refusal to pay, he applied to LAD for legal aid to present a winding-up petition against them.

2. LAD found that the "defendant" in the Tribunal Order actually involved two companies. The complainant was thus advised to approach the Tribunal to have the Order amended. However, the Tribunal staff demanded a written request from LAD. The complainant felt aggrieved that LD had mistaken his two former employers to be a single one when referring his case to the Tribunal. He also complained that the Tribunal and LAD had shifted their responsibility onto each other when handling his application for legal aid.

No Mistake by LD

3. LD pointed out that the complainant had indicated his employment by two separate companies and presented his "employer's returns of remuneration" from them. LD staff explained the procedures and reminded him to check the registered addresses of the two companies at the Companies Registry for the Tribunal's records.

4. This Office considered LD to have stated clearly the names of the two companies as the "defendant" when referring the case to the Tribunal. LD had made no mistake.

Impartiality of Judiciary

5. Upon receipt of LD's referral, the Tribunal staff started drafting the claim form and asked the complainant about the connection between the two companies. The complainant explained that the company had changed its name but did not indicate that they were two separate companies.

6. Subsequently, the complainant telephoned the Tribunal staff to apply for an amendment of the name(s) of the "defendant" in the Order. As he could not state clearly the amendment required, the Tribunal staff suggested that he obtain documentation from LAD to facilitate his application.

7. This Office considered that as the complainant had checked the content of his claim form and signed on it, the Tribunal staff should not be blamed for the mistake in the name(s) of the "defendant". Furthermore, the Tribunal staff had to be impartial and should not advise any party how to amend the Order. They could only offer explanation and assistance on matters of procedures.

Prompt Response from LAD

8. LAD pointed out that as the particulars of the "defendant" provided by the complainant did not tally with the company registration search results, the complainant would encounter legal problems in presenting the winding-up petition to execute the Order. A LAD lawyer had explained to him the need to amend the Order. However, the complainant had never mentioned the Tribunal's request for a letter from the Department before amending the Order for him. Had he cited such a request, LAD would certainly have obliged.

9. As the complainant had no concrete evidence that he had raised such a request with LAD, this Office could not make any judgement on this. Nevertheless, upon our inquiry, LAD promptly responded and prepared the letter required for the Tribunal's follow-up action.

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

OFFICIAL RECEIVER'S OFFICE ("ORO")

Case No. OMB 2007/0389
Insurance policy – (a) unreasonably requesting the insurance company to terminate the complainant's policy; and (b) misleading the complainant that his insurance policy would not be terminated and realised

The Complaint

A bankruptcy order was made against the complainant by the court with ORO being appointed as the receiver ("Trustee") of his property. The complainant had all along taken out a life insurance policy with savings. The beneficiary under the policy was originally the complainant's mother but later changed to his wife. An ORO officer told the complainant that his policy would not be terminated and realised by the Trustee as a result of the bankruptcy order if the beneficiary was his wife. In this context, the complainant's wife continued to pay the premiums for the insurance. However, the complainant was later notified in writing by the insurance company that the policy had been terminated and realised by the Trustee. The complainant thus considered himself to have been misled by the ORO staff, resulting in unnecessary payment of several months' premiums by his wife.

Termination of Policy

2. As Trustee, ORO could realise the bankrupt's assets to settle fees and charges and repay debts in relation to the bankruptcy. If the bankrupt had taken out life insurance with savings, ORO could realise the residual value of the policy.

3. The complainant had stated in his Statement of Affairs that the beneficiary under the policy was his wife. Section 13 of the Married Persons Status Ordinance stipulates that if a policy of assurance or endowment is expressed to be for the benefit of the spouse or children of the insured, then the moneys payable under the policy shall not form part of the estate of the insured (the complainant and bankrupt in this case). In other words, the value of the complainant's policy would be protected under the Ordinance and should not be subject to the debts owed by the complainant. However, the complainant had changed the beneficiary under the policy from his mother to his wife within five years before he filed for bankruptcy. ORO considered that such change constituted a transfer of assets made in the manner of "a transaction at an undervalue" and could be deemed invalid. Thus, ORO was empowered to request the insurance company to terminate the policy and remit the residual value to ORO.

No Misleading Statement

4. With regard to the allegation that the complainant had been misled by ORO staff, ORO could not verify it because the staff in question had already resigned. However, judging from the relevant letter issued by that staff to the insurance company, ORO believed that the staff was at that time checking the contents of the policy and had not yet decided how it should be handled. It was unlikely, therefore, that any conclusion or commitment had been made.

5. Moreover, as the staff in question had assigned a wrong file number to the letter concerned and misplaced the reply from the insurance company in another case file, the matter on the policy was not followed up promptly. ORO had, therefore, reminded all staff handling cases to take reference and ensure correct use of file numbers and proper filing.

6. ORO had reimbursed the complainant the premiums paid by his wife for the period from his bankruptcy to the date of termination of the policy.

Our Comments

7. This Office considered that even though the ORO staff had advised the complainant that his policy could not be terminated because the beneficiary was his wife, he was just trying to explain to the complainant the meaning of one of the provisions in the Married Persons Status Ordinance. Certainly, it would have been clearer if the staff had added that this was subject to clarification with the insurance company.

8. We noted that ORO had adopted proper follow-up measures in respect of the mistakes in record keeping and filing.

RATING AND VALUATION DEPARTMENT (“RVD”)

Case No. OMB 2007/0354

Numbering of village houses – improperly allocating similar numbers to two village houses

The Complaint

The complainant lived in a unit within a village house in the New Territories. In 2002, RVD assigned “Flat B, G/F, No. 11” as his residential address. However, the complainant later found that mail items were often misdelivered to another house nearby with a similar address (No. 11B), causing much inconvenience to him and his family.

Rules on Numbering of Buildings

2. The Commissioner of Rating and Valuation is authorised by law to number any building which fronts or abuts on any street. As regards villages in the New Territories, RVD will automatically allocate a number to any new building that has been issued a Certificate of Compliance by the Lands Department, with reference to the information from that department on the name of the place. For existing rural properties, a formal building number will be allocated upon application.

3. In allocating a number to a building, RVD has to take into account the layout of the buildings in the neighbourhood and their existing numbers, so that the numbers would run consecutively. Moreover, numbers have to be reserved for nearby sites, so that building numbers follow a logical sequence.

4. In 1997, RVD first allocated "No. 11" to the village house containing the complainant's unit. The owner of the house subsequently filed a "Requisition for Particulars of Tenements" indicating that the ground floor had been divided into units A and B, the latter being the complainant's residence. RVD, therefore, assigned "Flat B, G/F, No. 11" to unit B in 2002.

5. In fact, the complainant's wife had also complained to the Post Office ("PO") about mail confusion. In September 2006, a joint site inspection by PO and RVD confirmed the complainant's address to be correct. However, "11B" was not an official number allocated by RVD. The Department, therefore, contacted the owner of "11B", but the latter did not apply for an official house number as advised.

6. PO had since taken steps to improve its mail delivery service to the complainant.

Our Observations and Comments

7. RVD was properly following its established policy and guidelines in allocating "Flat B, G/F, No. 11" to the complainant's residence.

8. However, it is not mandatory for village houses to have an official house number. As a result, RVD could only negotiate with those using an unofficial house number (the owner of "No. 11B" in this case) to rectify the situation. There are clearly deficiencies in the policy and guidelines concerned.

9. We were pleased that RVD had subsequently allocated a suitable official number to replace "No. 11B" thus resolving matters. Meanwhile, RVD would monitor the numbering of buildings in rural areas for improvement.

A case of deficient policy and guidelines

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

TRANSPORT DEPARTMENT ("TD")

Case No. OMB 2007/4698

Air quality and noise control – inadequate control over air and noise pollution caused by public buses at a terminus

The Complaint

The complainant alleged that the patronage of a certain bus route on weekends and public holidays during the non-swimming season was only 20% to 30% of that in the swimming season. However, the bus company maintained the frequency of the service, thus causing air and noise pollution.

2. He had complained to TD several times. However, the Department kept replying that the frequency was necessary to meet public demand, without providing data in support.

3. He also complained that the bus drivers did not switch off their engines. He criticised TD for not closely monitoring the bus company's observance of the Guideline on Switching off Idling Engines ("Guideline").

Bus Frequency Appropriate

4. This Office noted that TD staff had conducted site inspection and investigation and confirmed that the number of passengers during the swimming and non-swimming seasons were similar. It had also consulted the District Council, which supported maintaining the frequency of the service.

Improvement Measures

5. TD had urged the bus company to remind the drivers to avoid buses waiting at the terminus for too long and to follow the Guideline.

6. This Office suggested that TD also request the Environmental Protection Department to help monitor the air quality and noise level in the vicinity of the terminus against the statutory limits. Should the limits be found to be exceeded, TD should consider remedial action such as relocating the terminus.

A case of need for closer monitoring

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

VOCATIONAL TRAINING COUNCIL ("VTC")

Case No. OMB 2007/1336

Parking space application – confusing procedures in processing applications and poor staff attitude

The Complaint

The complainant alleged that there was confusion when the Evening Studies Unit of an Institute under VTC processed his application for an evening parking space. Moreover, the staff handling his application was impolite to him.

Applications Considered on Individual Merits

2. As a matter of principle, evening parking spaces were normally available for academic and administrative staff only. However, students who were physically handicapped or had special needs and had to drive to the Institute could also apply for such parking facilities. Applications would be considered on their individual merits. The Unit, therefore, did not issue any notice to invite students to apply.

No Set Deadline

3. Originally, the Unit had not set any deadline for application. However, in view of the large number of applications, the Unit supervisor verbally instructed his staff to stop receiving applications in order to clear the backlog as quickly as possible.

4. When the complainant later submitted his application, the staff told him that application was closed. He insisted on handing in his application and the staff finally accepted it. VTC emphasised that his application had been processed within a reasonable time frame and was rejected because he was ineligible.

No Clear Guidelines

5. This Office noted that the Institute had never informed students formally, say by notices, the circumstances for applications for parking spaces to be entertained. Nor had they set out the dates and deadlines for application. They had simply closed application arbitrarily. That was unfair to the students, who were not informed. Disputes would, therefore, be unavoidable.

6. In this incident, the Institute accepted the complainant's application even after the deadline. That was also unfair to those who had not insisted on submitting their application. From an administrative angle, there were multiple aspects of impropriety on the part of the Institute.

7. As regards the complainant's allegation about the poor manners of the staff, the staff concerned had denied this. In the absence of independent evidence, this Office would not comment. Nevertheless, the staff and the Institute had already apologised to the complainant.

Proper Fee-paying Parking Facilities Suggested

8. We considered that adult students should generally be responsible for their own transport arrangements. The Institute was not obliged to provide free parking for students except for those physically handicapped. However, public resources would not be properly utilised if the parking spaces in the Institute were left vacant.

9. This Office, therefore, suggested that VTC should consider providing the evening parking spaces on a fee-charging basis or outsourcing them to a carpark management agent so that evening students might make use of them at their own expense.

10. The Unit subsequently issued an administrative circular announcing that some of the parking spaces would be available to evening students on a monthly fee basis.

A case of lack of proper procedures

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2006/4255

Replacement of water meters – (a) giving contradictory information as to whether the old meter at the complainants' flat had been retained; and (b) removing the new meter without prior notice and failing to inspect the inside service of the unit

The Complaint

The complainants noted that their water charges had dropped drastically after replacement of the old water meter at their flat by WSD. Suspecting that the old meter removed had been inaccurate, they telephoned the Department for an examination of that meter. The hotline staff at first indicated that the old meter was still with WSD, but told them later that it had been disposed of and thus not available for checking. Moreover, WSD staff allegedly removed the new water meter without notice, and had failed to check the inside service as promised.

Misinformation

2. Around 270,000 old water meters were removed and replaced by WSD each year. It was not feasible to retain them for checking later as they would require a lot of storage space and manpower. Consequently, all old meters removed would be disposed of as garbage.

3. The Department admitted that its hotline staff had misinformed the complainants that the old meter had been retained. It had reminded staff that all old meters replaced after long use would be disposed of immediately.

Inaccurate Meter Reading and Clerical Error

4. The complainants' daughter had called WSD and raised doubts about their water charges. The staff replied that they could only remove the new meter for tests. However, the notification issued by the Department mentioned that its staff would visit the flat to replace the water meter and inspect the inside service. WSD explained that it was a clerical error for the notification to mention about inspection of the inside service. On the other hand, its staff did try to contact the complainants before removing the new meter. As nobody answered the door, the staff left a note informing the complainants that the water meter had been replaced.

5. WSD had looked up the water consumption records as well as past meter readings of the complainants' flat and confirmed that the new meter was working properly. The drastic reduction in water charges was probably due to a misreading by the meter reader. Subsequently, WSD adjusted the water charges and apologised to the complainants.

Tip of Iceberg?

6. It was incredible that WSD could have made so many mistakes in handling this case. This Office was worried that it might just be the tip of an iceberg. The Ombudsman urged WSD to step up staff training and minimise any chance of errors.

7. WSD had accepted these suggestions and enhanced its staff training programmes.

A case of negligence

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2007/3321

Escape route – unreasonably denying the complainant and other villagers the use of stairs at a slope

Promise Broken

WSD had promised some villagers use of newly constructed stairs at a slope after completion of the slope upgrading works. The stairs replaced an old track leading to the catchwater road on the crest and was the only escape route for villagers in case of fire. However, WSD later locked the gates to the stairs and stopped public use.

Land Authority's Requirement

2. The stairs were built between two slopes managed by the local District Lands Office ("DLO"). WSD was the maintenance agent of these two slopes and was responsible for the slope upgrading works. It had been WSD's intention to allow villagers to use the stairs for access to the catchwater road.

3. However, DLO considered the stairs to have been built for slope maintenance and should not be open to the public. WSD, therefore, locked up the gates before handing over the site to DLO.

4. DLO subsequently agreed to open the stairs for public use as and when it was upgraded by WSD to specified standard.

Our Observations

5. WSD should have consulted DLO before making a commitment to the villagers. If so, it would have known DLO's requirements of the standards for the stairs and incorporated them into the slope upgrading works. Moreover, the misunderstanding, inconvenience and additional expenses incurred could have been avoided.

6. In this connection, we suggested that WSD should note for future reference and, in similar cases, consult with other departments concerned before making any public commitment.

A case of lack of consultation